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Director's Office

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  <b>DEAN HENNINGSSEN</b> <b>Crawford County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER</b> <b>NO. 2012-AFO-13</b>
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TO: Dean Henningsen  
Henningsen Farm  
3751 F Avenue  
Westside, Iowa 51467

**I. SUMMARY**

This administrative consent order is entered into between Dean Henningsen and the Iowa Department of Natural Resources (DNR) for the purpose of resolving the issues surrounding a manure discharge into Miller Creek that resulted in a fish kill and water quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Holly Vandemark, Field Office 4  
Iowa Department of Natural Resources  
1401 Sunnyside Lane  
Atlantic, Iowa 50022  
Phone: 712/243-1934

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties. Iowa Code section 481A.151 authorizes the assessment and recovery of damages to natural resources.

**III. STATEMENT OF FACTS**

1. Dean Henningsen is a certified commercial applicator. He was hired by Ben Adams to apply confinement manure to crop ground owned by Joan Adams in Sections 32 and 33 in Crawford County.
2. On November 8, 2011, Paul Assman, the Crawford County Engineer, reported a fish kill in Miller Creek at the L Avenue bridge near Vail, Iowa to DNR Field Office 4. Mr. Assman stated he noted a manure odor and observed dead fish downstream of the highway bridge.
3. On November 8, 2011, Holly Vandemark, DNR Field Office 4 environmental specialist senior, responded to the fish kill. She began the investigation at the L Avenue bridge area and proceeded upstream. She observed a manure application staging area in a bean field on the west side of 360<sup>th</sup> Street, south of L Avenue. The area had spilled manure on the ground. Due to lack of daylight, Ms. Vandemark suspended the investigation for the evening.
4. On November 9, 2011, Ms. Vandemark returned to the application field. Ben Adams, the person who farms the land, stopped to discuss the situation with Ms. Vandemark. Mr. Adams explained that he hired Dean Henningsen to apply manure from his confinement facility and that the application was completed by noon on November 7, 2011. Ms. Vandemark asked Mr. Adams to disc the area of spilled manure to spread it out and reduce the runoff potential.
5. Ms. Vandemark located an area of a manure release from the application field to the creek bank. The flattened grass on the top of the creek bank contained manure residue. Ms. Vandemark noted that the flattened grass fanned out as the manure traveled down the bank into the creek.
6. Ms. Vandemark contacted Mr. Henningsen and asked him if there had been a problem with his equipment during the manure application. Mr. Henningsen stated that there may have been a pinhole in the hose. He confirmed that the manure application was completed on November 7, 2011.
7. During her investigation on November 9, 2011, Ms. Vandemark conducted field tests and collected laboratory samples.

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The results of the field tests are as follows:

Location	Ammonia	pH	Temperature	Dissolved Oxygen
50-75' Upstream of the Manure Discharge	0.1 ppm	8.1	40°F	8 ppm
At the Manure Discharge	0.3 ppm	7.9	40°F	6-8 ppm
50-75' Downstream of the Manure Discharge	0.2 ppm	8.0	40°F	6-8 ppm
At the L Avenue Bridge	0.6 ppm	8.0	42°F	8 ppm

The results of the laboratory samples are as follows:

Location	Fecal Coliform	Total Suspended Solids	Ammonia	Biological Oxygen Demand
50-75' Upstream of the Manure Discharge	200/100 mL	10 mg/L	<0.05 mg/L	<2 mg/L
At the Manure Discharge	130/100 mL	9 mg/L	0.08 mg/L	<4 mg/L
50-75' Downstream of the Manure Discharge	120/100 mL	35 mg/L	0.09 mg/L	<4 mg/L
At the L Avenue Bridge	40/100 mL	8 mg/L	0.55 mg/L	<2 mg/L

8. On December 15, 2011, DNR issued a Notice of Violation letter to Mr. Henningsen for the violations associated with the manure discharge on November 7, 2011. The violations included: prohibited discharge, general water quality criteria, failure to maintain minimum manure control; and failure to report a manure release. The letter indicated that the violations have been referred and possible enforcement may follow.

9. Ben Wallace and Don Herrig, with the DNR Fisheries Bureau, conducted the fish kill investigation and determined that the fish kill in Miller Creek travelled 8,940 feet from section 32 to section 30 of Westside Township in Crawford County. It was estimated that 3,837 fish were killed with a value of \$7,008.86. The Fisheries investigative costs equaled \$282.56 and the Field Office investigative costs equaled \$664.57. The total investigative costs equaled \$947.13.

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**IV. CONCLUSIONS OF LAW**

1. Iowa Code sections 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During DNR Field Office 4's investigation it was determined that manure from Mr. Henningsen's manure application was discharged into Miller Creek. The above-mentioned facts indicate violations of these provisions.

2. Iowa Code section 459.103 provides that the Environmental Protection Commission (Commission) shall adopt rules related to the construction or operation of animal feeding operations, including permit and minimum manure control requirements. The Commission has adopted such rules at 567 IAC Chapter 65.

3. 567 IAC 65.2(7) states that all manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface or groundwater pollution. The manure application by Mr. Henningsen resulted in a discharge to Miller Creek. The above-mentioned facts indicate a violation of this provision.

4. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated the elevated levels of several pollutants and the manure discharge resulted in a fish kill. The above-facts disclose a violation of one or more of these criteria.

5. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge from Mr. Henningsen's land application.

**V. ORDER**

THEREFORE, DNR orders and Mr. Henningsen agrees to do the following:

1. Mr. Henningsen shall minimize potential manure releases by maintaining and operating equipment in accordance with manufacturer specifications;
2. Mr. Henningsen shall comply with all manure application regulations in the future;

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3. Mr. Henningsen shall submit a written plan of action to DNR Field Office 4 within 30 days of the date the Director signs this administrative consent order. The plan of action shall describe the actions that will be taken to prevent future manure releases;
4. Mr. Henningsen shall pay fish restitution in the amount of \$7,008.68 and investigative costs in the amount of \$947.13 within 30 days of the date the Director signs this administrative consent order; and
5. Mr. Henningsen shall pay an administrative penalty in the amount of \$4,875.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty of \$4,875.00. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Mr. Henningsen gained an economic benefit from the improper manure application that resulted in the manure discharge. But due to the delay in the notification of the discharge and the investigation of it, the DNR is unable to determine the specific economic benefit. Therefore, a conservative estimate of \$500.00 is being assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The manure was applied and was discharged to Miller Creek. Failure to properly land apply manure threatens the water quality program. Improper land application can lead to elevated levels of nitrates, ammonia, phosphorus, organic matter, fecal bacteria, e-coli and other microorganisms in both ground water and surface water. These conditions can endanger human health as well as that of livestock and other wildlife. This discharge resulted in water quality

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violations and a fish kill. Based on the above considerations, \$3,000.00 is assessed for this factor.

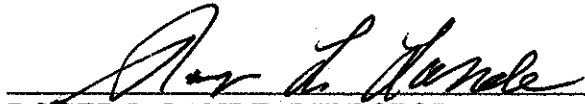
Culpability – Mr. Henningsen has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Henningsen is a commercial manure applicator and is aware of the regulations and requirements surrounding manure application. Therefore, \$1,375.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**


This administrative consent order is entered into knowingly and with the consent of Mr. Henningsen. For that reason Mr. Henningsen waives his right to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 18<sup>th</sup> day of  
April, 2012.

  
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DEAN HENNINGSEN

Dated this 13 day of  
April, 2012.

No Facility Number; Kelli Book; Field Office 4; EPA; VIII D 3, VIII D 4